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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,394	03/22/2001	Christopher E. Cunningham	66-12424	4354

7590 08/12/2002  
Henry C. Query, Jr.  
504 S. Pierce Ave.  
Wheaton, IL 60187

EXAMINER

KEASEL, ERIC S

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 08/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/815,394

Applicant(s)

CUNNINGHAM, CHRISTOPHER E.

Examiner

Eric Keasel

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “second flow port in communication with second branch” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification defines the first branch as 54, the second branch as 56, and the third branch as 58. However, the claims state that the “second flow port is in communication with the second branch”, which contradicts the terminology used in the disclosure. The terms used in the specification must correspond to the terms used in the claims (the above example is one of many similar errors).

Appropriate correction is required.

3. The specification is objected to as failing to provide clear support for the claim terminology. 37 CFR § 1.75(d)(1) requires that terms and phrases used in the claims find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description (see MPEP 608.01(o)). Specifically, the terms “actuating means for moving”, “means for conveying hydraulic pressure”, “means for moving the gate in a second direction”, and “mechanical biasing means” do not appear in the specification.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete errors too numerous to mention specifically. The following noted informalities are merely exemplary thereof.

Applicant appears to be changing the terminology used to describe the various parts. For example, the figures show the first branch communicating with the first flow port, but the second branch of the specification is not connected to any flow port. As described in the specification, it is the third branch 58 that is communicating with the third flow port. It is vague and indefinite as to what the metes and bounds of the claims are when the terms used to describe the features are changing.

The terms “actuating means for moving”, “means for conveying hydraulic pressure”, “means for moving the gate in a second direction”, and “mechanical biasing means” do not appear in the specification. It is vague and indefinite as to what these terms mean, especially in light of applicant’s redefining terms between the specification and the claims.

The preamble to claim 8 (and dependent claims 9-15) does not appear to be commensurate in scope with the bodies of claims 8-15. The preamble indicates that the claims are directed to the positively recited closure member with an intended use as set forth in claim 8, lines 1-4. However, the bodies of the claims appear to positively recite structure that is not part of the closure member (e.g. gate cavity, actuating means, tubing hanger, tubing spool, etc.). It is vague and indefinite as to whether the claims are directed to a closure member only or a closure member in combination with a tubing hanging, tubing spool, etc.

What are these seals? The only mention in the specification of seals is reference numbers 46 and 50. However, reference number 50 does not appear to be a seal to hold pressure within the gate cavity (see Fig. 2).

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 7-12, 14, and 15 (as understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Schreuder (US Patent Number 396,239).

Schreuder discloses a reciprocating gate (3) with two divergent ports communicating with two branches (compare Schreuder, fig. 1 and application, fig. 2). The gate is connected to separate pistons that are actuated by fluid pressure to move the gate in opposite directions.

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 6, 12, and 13 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreuder in view of Smith (US Patent Number 3,104,659).

Schreuder discloses the embodiment with the “means for moving” being oppositely actuated pistons. However, Schreuder does not disclose the alternate embodiment with the piston being spring biased in the opposite direction. Smith discloses the use of a spring (47) with a similar gate (43) with divergent ports communicating with divergent branches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the spring-biased piston of Smith with the gate valve of Schreuder in order to bias the gate in a position as taught by Smith (see column 3, lines 29-32).

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Krueger, Milliken, Bent, Trask, DePirro, and Richeson et al. disclose similar structure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (703) 308-6260. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on (703) 308-1946. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3588 for regular communications and (703) 305-3588 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

EK 6 AUG 02  
ek  
August 6, 2002

Henry C. Yuen  
Supervisory Patent Examiner  
Group 3700